STATE OF MICHIGAN

COURT OF APPEALS

CHRISTINE V. LEONARD,

Plaintiff-Appellee,

v

ART VAN FURNITURE, INC. and RASHID BARKHO,

Defendants-Appellants.

UNPUBLISHED
June 8, 2004

No. 243139
Wayne Circuit Court
LC No. 02-201268-CL

CHARLES SIMS,

Plaintiff-Appellee,

v

ART VAN FURNITURE, INC. and ERNIE DINNINGER,

Defendants-Appellants.

No. 243368
Genesee Circuit Court
LC No. 02-073063-CL

Before: Neff, P.J. and Wilder and Kelly, JJ.

PER CURIAM.

In these employment discrimination cases which have been consolidated on appeal, defendant Art Van Furniture, Inc. appeals by leave granted orders denying their motions to compel arbitration and for summary disposition.[1] We reverse and remand for further proceedings.

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[1] We refer to the plaintiffs respectively as Leonard and Sims and to defendant Art Van Furniture, Inc. as Art Van.

I. Basic Facts and Procedural History

In docket number 243139, Leonard filed a complaint against Art Van alleging sexual harassment and retaliation under the Michigan Civil Rights Act (CRA), MCL 37.2101, *et seq.*, and assault and battery. In docket number 243368, Sims filed a complaint against Art Van alleging a violation of the Michigan Whistleblowers' Protection Act (WPA), MCL 15.361, *et seq.*, and race discrimination under the CRA. In each case, Art Van filed a motion to compel arbitration and for summary disposition under MCR 2.116(C)(7). Art Van asserted that the employment application and employee handbook included predispute arbitration agreements. In response, plaintiffs argued, among other things, that there was no enforceable arbitration agreement.

With regard to Leonard, the trial court denied Art Van's motion determining that the handbook provision allowing Art Van to modify its contents made Art Van's promises illusory and any agreement lacking in mutuality. It also determined that the application did not require the parties to arbitrate because it expressly became null and void after six months. With regard to Sims, the trial court also denied Art Van's motion determining that the handbook lacked mutuality because of the provision that Art Van could modify the handbook. We granted leave and consolidated the two cases to address whether the trial courts erred in denying Art Van's motions to compel arbitration.

II. Analysis

A. Enforceable Predispute Arbitration Agreement

Art Van argues that the trial courts erred in denying its motions to arbitrate and for summary disposition because the parties entered an enforceable predispute arbitration agreement. We agree.

We review de novo grants or denials of summary disposition pursuant to MCR 2.116(C)(7). *DeCaminada v Coopers & Lybrand*, 232 Mich App 492, 496; 591 NW2d 364 (1998). We also review de novo issues of contract interpretation. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002).

"[P]redispute agreements to arbitrate statutory employment discrimination claims are valid if: (1) the parties have agreed to arbitrate the claims (there must be a valid, binding contract covering the civil rights claims), (2) the statute itself does not prohibit such agreements,[2] and (3) the arbitration agreement does not waive the substantive rights and remedies of the statute and arbitration procedures are fair so that the employee may effectively vindicate his statutory rights." *Rembert v Ryan's Steak Houses, Inc (On Remand)*, 235 Mich App 118, 156; 596 NW2d 208 (1999).

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[2] The parties do not contest this element.

The trial court denied Art Van's motions under the first criteria concluding that the parties did not enter into an enforceable predispute arbitration agreement. This ruling was incorrect. The employment application signed by both plaintiffs states in relevant part:

> I agree that this application will be considered only for a period of six months after its date. After this six-month period, this application will be null and void. Any continuing interest in employment with the Company must be evidenced by later applications for employment.
>
> IF HIRED, I AGREE TO SUBMIT TO FINAL AND BINDING ARBITRATION UNDER THE ARBITRATION PROCEDURES SET FORTH IN THE COMPANY'S EMPLOYEE HANDBOOK, ANY OF THE FOLLOWING CLAIMS:
>
> 1. ANY CLAIMED VIOLATION OF ANY MICHIGAN OR FEDERAL EMPLOYMENT STATUTE, INCLUDING, BUT NOT LIMITED TO, TITLE VII OF THE 1964 CIVIL RIGHTS ACT AS AMENDED, THE AGE DISCRIMINATION IN EMPLOYMENT ACT, THE ELLIOTT-LARSEN CIVIL RIGHTS ACT, THE PERSONS WITH DISABILITIES CIVIL RIGHTS ACT, THE FAMILY AND MEDICAL LEAVE ACT AND THE AMERICANS WITH DISABILITIES ACT;
>
> 2. ANY COMMON LAW TORT OR OTHER CLAIMS ARISING OUT OF MY EMPLOYMENT OR THE TERMINATION OF MY EMPLOYMENT.
>
> I FURTHER AGREE THAT THE DECISION OF THE ARBITRATOR IS FINAL AND BINDING ON THE COMPANY AND ME, AS PROVIDED BY LAW, AND THAT A CIRCUIT COURT MAY RENDER JUDGMENT ON AN ARBITRATION AWARD, AS PROVIDED BY LAW. IN CONSIDERATION OF THAT ARBITRATION REMEDY, I WAIVE ANY RIGHT TO COMMENCE ANY SUIT OR ACTION AGAINST THE COMPANY BECAUSE OF THE TERMINATION OF MY EMPLOYMENT.

Based on the express terms of the application, once Art Van hires an applicant, the employee and Art Van agree to be bound by the arbitration policy in the handbook. In other words, the arbitration clause is triggered by Art Van's hiring the applicant; employment is therefore a condition precedent to the arbitration agreement. "A 'condition precedent' is a fact or event that the parties intend must take place before there is a right to performance." *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 350; 605 NW2d 360 (1999). The fact that employment is a condition precedent to the arbitration agreement is evident from the language "*IF HIRED*, I AGREE . . . [to arbitrate employment related claims]" (emphasis added). Further support for this proposition is the language that requires arbitration of any disputes "arising out of my employment or the termination of my employment."

On the other hand, the application becomes "null and void" after six months only if the applicant is *not* hired. This is evident from the phrases "application will be considered" and "continuing interest in employment" which both indicate circumstances under which the applicant is merely being considered as a future hire. Accordingly, once Art Van employed

plaintiffs, they were bound by the arbitration policy in the employee handbook as expressly agreed in the application. Therefore, the trial court erred in ruling that the parties did not enter into a valid predispute arbitration agreement.

B. Irrevocable Statutory Arbitration Agreement

Leonard also argues that the predispute arbitration agreement is not a statutory, but rather, a common law arbitration agreement that may be unilaterally revoked. Leonard suggests that she revoked the agreement when she filed her complaint in the trial court. We disagree.

This Court has held: "The Michigan arbitration statute [MCL 600.5001 *et seq.*] provides that an agreement to settle a controversy by arbitration under the statute is valid, enforceable, and irrevocable if the agreement provides that a circuit court can render judgment on the arbitration award." *Hetrick v Friedman,* 237 Mich App 264, 269; 602 NW2d 603 (1999), quoting *Tellkamp v Wolverine Mut Ins Co,* 219 Mich App 231, 237; 556 NW2d 504 (1996), citing MCL 600.5001. We conclude that it is a statutory arbitration agreement because the language of the binding arbitration agreement clearly states that "a circuit court may render judgment on an arbitration award, as provided by law." Accordingly, the arbitration agreement here is a statutory arbitration agreement and is not unilaterally revocable.

Plaintiffs also argue that if it is a statutory arbitration agreement, it is void because the employee handbook allows Art Van to unilaterally revoke it. Plaintiffs' argument is misplaced. At oral argument, defendant conceded that that the employment *handbook* itself does not constitute an enforceable agreement. But the arbitration clause contained in the employment application does not permit a unilateral revocation by either party. Because the parties only agreed to be bound by the arbitration policy through the express language of the employment application, the other terms of the employee handbook are irrelevant.[3]

C. Other Arguments

Leonard's argument that the one-year statute of limitation violates her rights is moot because she instituted her claims within one year. We also decline to address Leonard's arguments that the arbitration agreement is procedurally unfair and violates public policy because they were not addressed by the trial court. *Fast Air, Inc v Knight,* 235 Mich App 541, 549; 599 NW2d 489 (1999). Even though we may address unpreserved issues, we decline to address these because they are not adequately briefed on appeal. *Yee v Shiawassee County Bd of Comm'rs,* 251 Mich App 379, 406; 651 NW2d 756 (2002).

[3] Moreover, MCL 600.5011 mandates that "neither party shall have the power to revoke any agreement . . . made as provided in this chapter without the consent of the other party[.]"

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Kurtis T. Wilder
/s/ Kirsten Frank Kelly